

Office of the Secretary, Interior

§ 45.35

- (b) Issue subpoenas to the extent authorized by law;
- (c) Rule on motions;
- (d) Authorize discovery as provided for in this subpart;
- (e) Hold hearings and conferences;
- (f) Regulate the course of hearings;
- (g) Call and question witnesses;
- (h) Exclude any person from a hearing or conference for misconduct or other good cause;
- (i) Issue a decision consistent with § 45.60(b) regarding any disputed issues of material fact relating to any bureau's or other Department's condition or prescription that has been referred to the ALJ for hearing; and
- (j) Take any other action authorized by law.

§ 45.32 What happens if the ALJ becomes unavailable?

- (a) If the ALJ becomes unavailable or otherwise unable to perform the duties described in § 45.31, the Hearings Division shall designate a successor.
- (b) If a hearing has commenced and the ALJ cannot proceed with it, a successor ALJ may do so. At the request of a party, the successor ALJ may recall any witness whose testimony is material and disputed, and who is available to testify again without undue burden. The successor ALJ may, within his or her discretion, recall any other witness.

§ 45.33 Under what circumstances may the ALJ be disqualified?

- (a) The ALJ may withdraw from a case at any time the ALJ deems himself or herself disqualified.
- (b) At any time before issuance of the ALJ's decision, any party may move that the ALJ disqualify himself or herself for personal bias or other valid cause.
 - (1) The party must file the motion promptly after discovering facts or other reasons allegedly constituting cause for disqualification.
 - (2) The party must file with the motion an affidavit or declaration setting forth the facts or other reasons in detail.
 - (c) The ALJ must rule upon the motion, stating the grounds for the ruling.

- (1) If the ALJ concludes that the motion is timely and meritorious, he or she must disqualify himself or herself and withdraw from the case.

- (2) If the ALJ does not disqualify himself or herself and withdraw from the case, the ALJ must continue with the hearing process and issue a decision.

§ 45.34 What is the law governing ex parte communications?

- (a) Ex parte communications with the ALJ or his or her staff are prohibited in accordance with 5 U.S.C. 554(d).
- (b) This section does not prohibit ex parte inquiries concerning case status or procedural requirements, unless the inquiry involves an area of controversy in the hearing process.

§ 45.35 What are the requirements for motions?

- (a) *General.* Any party may apply for an order or ruling on any matter related to the hearing process by presenting a motion to the ALJ. A motion may be presented any time after the Hearings Division issues a docketing notice under § 45.30.

- (1) A motion made at a hearing may be stated orally on the record, unless the ALJ directs that it be reduced to writing.

- (2) Any other motion must:

- (i) Be in writing;

- (ii) Comply with the requirements of this subpart with respect to form, content, filing, and service; and

- (iii) Not exceed 10 pages.

- (b) *Content.* (1) Each motion must state clearly and concisely:

- (i) Its purpose and the relief sought;

- (ii) The facts constituting the grounds for the relief sought; and

- (iii) Any applicable statutory or regulatory authority.

- (2) A proposed order must accompany the motion.

- (c) *Response.* Except as otherwise required by this part or by order of the ALJ, any other party may file a response to a written motion within 10 days after service of the motion. When a party presents a motion at a hearing, any other party may present a response orally on the record.